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KNOBBE MARTENS OLSON & BEAR LLP			BURLESON, MICHAEL L	
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IRVINE, CA 92614			2626	

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Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/840,548

Applicant(s)

ROLLINS, DOUG

Examiner

Michael Burleson

Art Unit

2626

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-41 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-41 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 3.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## DETAILED ACTION

### *Information Disclosure Statement*

1. The information disclosure statement (IDS) was submitted on April 23, 2001. The submission is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

- ICAW 1-28 and 30-41*
2. Claim ~~1-41~~ are rejected under 35 U.S.C. 103(a) as being unpatentable over Murphy US 6028679 in view of Barak US 6046824.

Regarding claim 1, Murphy teaches of a system (10) for transmitting/receiving a fax over the internet global area networks (12) and an electronic mail agent server (22) (column 2, lines 58-67), which reads on a method of communicating a fax message via a computer network. Murphy teaches that remote device (16) that contains modems (64) and (84), which a remote server (22) is connected by PTOS line (column 3, lines 63-67, column 4, lines 27-28 and figures 2 and 8). This reads on receiving the fax message by

a server having at least one dial up modem. Murphy teaches that the modems (62) and (84) serve as input and output modems during transmission and the reverse for reception of data (column 4, lines 22-28), which reads on sending the fax message via the dial-up modem to a receiver.

Murphy fails to teach of determining availability of the dial-up modem.

Barak teaches that it is determined whether there is an available modem (column 14, lines 15-22), which reads on determining availability of the dial-up modem.

Murphy could have been modified with the step of determining the availability of a modem of Barak. This modification would have been obvious to one of ordinary skill in the art at the time of the invention in order to determine if a fax message can be sent.

Regarding claim 2, Murphy teaches that the data stream is under control of the global network servers (12) until it reaches its destination (column 3, lines 57-61), which reads on storing the fax message at the server.

Regarding claim 3, Barak teaches that the fax logger (11) contains fax/modems (64) (column 10, lines 2-22 and figure 4). He also teaches that the facsimile logging system determines whether there is an available modem (column 14, lines 13-20 and figure 12). This reads on reserving an available dial-up modem for transmitting the fax message to the receiver.

Regarding claim 4, Barak teaches of a step of determining whether the modem is available (column 14, lines 12-25), which reads on determining availability of the dial-up modem comprises identifying the active or inactive state of the dial-up modem.

Regarding claim 5, Barak teaches of checking continually for facsimiles and determining whether the modem is available (column 14, lines 12-25 and figure 12), which reads on determining availability of the dial-up modem is performed periodically at predetermined times, or at start-up of the server, or after the modem is removed or another modem is added.

Regarding claim 6, Barak teaches that the queue is a memory that stores data, which could include the state of the modem (column 14, lines 12-35), which reads on saving the active or inactive state of the dial-up modem in a memory.

Regarding claim 7, Barak teaches that once the queue becomes not empty, it is determined whether there is an available modem (column 14, lines 15-20 and figure 12), which reads on queuing the fax message for sending at a later time if there is no dial-up modem available for immediate sending.

Regarding claim 8, Barak teaches that once the queue becomes not empty, it is determined whether there is an available modem (column 14, lines 15-20 and figure 12), which reads on a waiting for a period of time that is based upon at least one characteristic of the load upon the dial-up modem.

Regarding claim 9, Barak teaches that a confirmation is sent to the operator, after the facsimile is transmitted (column 14, lines 32-36), which reads on sending a transmittal report to a transceiver having originated the fax message.

Regarding claim 10, Murphy teaches that the electronic mail server (22) is connected over a POTS line (24) to another device (16) which is connected to a remote fax machine (26) (column 2, lines 65-67, column 3, lines 1-3 and figure 2), which reads

Art Unit: 2626

on sending the fax message to a receiver that is physically located in the local-toll area of the server.

Regarding claim 11, Barak teaches that the store and forward mechanism assures that a standard facsimile transmission protocol will be used for both sending and receiving facsimiles (column 11, lines 15-18), which reads on receiving the fax message includes handling the fax message according to the T.37 standard.

Regarding claim 12, Murphy teaches that the data stream is sent to a local agent server (20) on the internet global area network (12) (column 3, lines 48-56), which reads on receiving the fax message includes receiving the fax message via the internet.

Regarding claim 13, claim 13 is rejected for the same reasons as claim 1.

Regarding claim 14, claim 14 is rejected for the same reasons as claim 2.

Regarding claim 15, claim 15 is rejected for the same reasons as claim 3.

Regarding claim 16, claim 16 is rejected for the same reasons as claim 7.

Regarding claim 17, Murphy teaches of an EPROM (68) that contain software instruction sets for the CPU (72) which runs the ecom (16) (column 4, lines 21-33), which reads on a program storage device storing instructions that when executed by a computer performs the method. The ecom (16) contains modems (64) and (84), which a remote server (22) is connected by PTOS line (column 3, lines 63-67, column 4, lines 27-28 and figures 2 and 8). This reads on receiving the fax message by a server having at least one dial up modem. Murphy teaches that the modems (62) and (84) serve as input and output modems during transmission and the reverse for reception of data

Art Unit: 2626

(column 4, lines 22-28), which reads on sending the fax message via the dial-up modem to a receiver.

Murphy fails to teach of determining availability of the dial-up modem.

Barak teaches that it is determined whether there is an available modem (column 14, lines 15-22), which reads on determining availability of the dial-up modem.

Murphy could have been modified with the step of determining the availability of a modem of Barak. This modification would have been obvious to one of ordinary skill in the art at the time of the invention in order to determine if a fax message can be sent.

Regarding claim 18, Barak teaches that the fax logger (11) contains fax/modems (64) (column 10, lines 2-22 and figure 4). He also teaches that the facsimile logging system determines whether there is an available modem (column 14, lines 13-20 and figure 12). This reads on reserving an available dial-up modem for transmitting the fax message to the receiver.

Regarding claim 19, Barak teaches that once the queue becomes not empty, it is determined whether there is an available modem (column 14, lines 15-20 and figure 12), which reads on queuing the fax message for sending at a later time if there is no dial-up modem available for immediate sending.

Regarding claim 20, Barak teaches that once the queue becomes not empty, it is determined whether there is an available modem (column 14, lines 15-20 and figure 12), which reads on a waiting for a period of time that is based upon at least one characteristic of the load upon the dial-up modem.

Regarding claim 21, Murphy teaches of a system (10) for transmitting/receiving a fax over the internet global area networks (12) and an electronic mail agent server (22) (column 2, lines 58-67), which reads on a method of communicating a fax message via a computer network. He teaches of a local fax machine (14) that is connected to ecom (16), which is connected to internet global area network (12) and another ecom (16), which is connected to a remote fax machine (26) (figure 1). Ecom (16) contains modems (62) and (84) (column 4, lines 26-28). This reads on transmitting a fax from a first fax transceiver to a first server forwarding of the fax by the first server, via a computer network, to a second server having a plurality of dial-up modems. Murphy teaches that the ecom (16) can query its mail server to see if there is a fax waiting (column 5, lines 26-35), which reads on receiving and storing the fax at the second server. Murphy teaches of modems (64) and (84) that serves as input and output modems during sending of data, which are contained in ecom (16) (column 4, lines 21-30). Ecom (16) sends the data to the electronic mail server (22), which is connected over a POTS line (24) to another device (16), which is connected to a remote fax machine (26) (column 2, lines 65-67, column 3, lines 1-3 and figure 2). It is obvious that if a modem is not available, then a fax message cannot be sent or received. This reads on sending the fax via a selected one of the dial-up modems, determined to be available, to a second fax transceiver, wherein the second fax transceiver is physically located in the same local-toll area, of a public telephone network, as the second server.

Murphy fails to teach of determining availability of each of the dial-up modems, and queuing transmission of the fax for a period of time.



Barak teaches that it is determined whether there is an available modem (column 14, lines 15-22), which reads on determining availability of the dial-up modems. Barak teaches that once the queue becomes not empty, it is determined whether there is an available modem (column 14, lines 15-20 and figure 12), which reads on queuing transmission of the fax for a period of time, and determining availability of each of the dial-up modems upon expiration of the time period, if none of the dial-up modems is available.

Murphy could have been modified with the step of determining the availability of a modem and queuing transmission of Barak. This modification would have been obvious to one of ordinary skill in the art at the time of the invention in order to queue a fax message unit a modem is available for transmission.

Regarding claim 22, Barak teaches that the store and forward mechanism assures that a standard facsimile transmission protocol will be used for both sending and receiving facsimiles (column 11, lines 15-18), which reads on receiving and storing includes processing the fax message according to the store and forward protocol.

Regarding claim 23, Barak teaches that the fax logger (11) contains fax/modems (64) (column 10, lines 2-22 and figure 4). He also teaches that the facsimile logging system determines whether there is an available modem (column 14, lines 13-20 and figure 12). This reads on reserving an available dial-up modem for transmitting the fax.

Regarding claim 24, Barak teaches that once the queue becomes not empty, it is determined whether there is an available modem (column 14, lines 15-20 and figure 12),

Art Unit: 2626

which reads on a waiting for a period of time that is based upon at least one characteristic of the load upon the dial-up modem.

Regarding claim 25, Murphy teaches of an EPROM (68) that contain software instruction sets for the CPU (72) which runs the ecom (16) (column 4, lines 21-33), which reads on a program storage device storing instructions that when executed by a computer performs the method. Murphy teaches of a system (10) for transmitting/receiving a fax over the internet global area networks (12) and an electronic mail agent server (22) (column 2, lines 58-67), which reads on a method of communicating a fax message via a computer network. He teaches of a local fax machine (14) that is connected to ecom (16), which is connected to internet global area network (12) and another ecom (16), which is connected to a remote fax machine (26) (figure 1). Ecom (16) contains modems (62) and (84) (column 4, lines 26-28). This reads on transmitting a fax from a first fax transceiver to a first server forwarding of the fax by the first server, via a computer network, to a second server having a plurality of dial-up modems. Murphy teaches that the ecom (16) can query it's mail server to see if there is a fax waiting (column 5, lines 26-35), which reads on receiving and storing the fax at the second server. Murphy teaches of modems (64) and (84) that serves as input and output modems during sending of data, which are contained in ecom (16) (column 4, lines 21-30). Ecom (16) sends the data to the electronic mail server (22), which is connected over a POTS line (24) to another device (16), which is connected to a remote fax machine (26) (column 2, lines 65-67, column 3, lines 1-3 and figure 2). It is obvious that if a modem is not available, then a fax message cannot be sent or received. This

Art Unit: 2626

reads on sending the fax via a selected one of the dial-up modems, determined to be available, to a second fax transceiver, wherein the second fax transceiver is physically located in the same local-toll area, of a public telephone network, as the second server.

Murphy fails to teach of determining availability of each of the dial-up modems, and queuing transmission of the fax for a period of time.

Barak teaches that it is determined whether there is an available modem (column 14, lines 15-22), which reads on determining availability of the dial-up modems. Barak teaches that once the queue becomes not empty, it is determined whether there is an available modem (column 14, lines 15-20 and figure 12), which reads on queuing transmission of the fax for a period of time, and determining availability of each of the dial-up modems upon expiration of the time period, if none of the dial-up modems is available.

Murphy could have been modified with the step of determining the availability of a modem and queuing transmission of Barak. This modification would have been obvious to one of ordinary skill in the art at the time of the invention in order to queue a fax message unit a modem is available for transmission.

Regarding claim 26, Barak teaches that the store and forward mechanism assures that a standard facsimile transmission protocol will be used for both sending and receiving facsimiles (column 11, lines 15-18), which reads on receiving and storing the fax message includes processing the fax message according to the store and forward protocol.

Regarding claim 27, Barak teaches that the fax logger (11) contains fax/modems (64) (column 10, lines 2-22 and figure 4). He also teaches that the facsimile logging system determines whether there is an available modem (column 14, lines 13-20 and figure 12). This reads on the act of reserving an available dial-up modem for sending the fax.

Regarding claim 28, Barak teaches that once the queue becomes not empty, it is determined whether there is an available modem (column 14, lines 15-20 and figure 12), which reads on a waiting for a predetermined period of time that is based upon at least one characteristic of the load upon the dial-up modem.

Regarding claim 30, Murphy teaches a fax message is received by server (22), which is sent to an ecom (16), which is connected to a fax machine (26) (figure 1). Murphy teaches that ecom (16) contains RAMS (74), (76) and (78) that provide for storing and forwarding email and facsimile data streams (column 4, lines 38-40). This reads on receiving the fax message by the server, storing the fax message in a memory and sending the fax message via the dial-up modem to a receiver.

Murphy fails to teach of determining the availability of at least one dial-up modem.

Barak teaches that it is determined whether there is an available modem (column 14, lines 15-22), which reads on determining availability of at least one dial-up modem.

Murphy could have been modified with the step of determining the availability of a modem of Barak. This modification would have been obvious to one of ordinary skill in the art at the time of the invention in order to determine if a fax message can be sent.

Regarding claim 31, Murphy teaches that the ecom (16) is connected to the server (20) by a telephone line (column 3, lines 63-67), which reads on the communication link comprises a public switched telephone network, a conventional telephone link, a fiber optic link or a wireless link.

Regarding claim 32, Murphy teaches that the electronic mail server (22) is connected over a POTS line (24) to another device (16) which is connected to a remote fax machine (26) (column 2, lines 65-67, column 3, lines 1-3 and figure 2), which reads on the receiver is physically located in the local-toll area of the server.

Regarding claim 33, Murphy teaches on an internet global area network (12) (figure 1), which reads on the computer network is the internet.

Regarding claim 34, Murphy teaches a system (10) for transmitting/receiving a fax over the internet global area networks (12) (column 2, lines 58-60). A local fax machine (14) is connected by line (15) to a signal manipulation device (16), which is in turn connected to a POTS line (18), which is terminated in a server (20), which is connected to the internet global area network (12). A remote server (22) is connected to the internet global area network (12) over a POTS line (24) to another device (16), which is connected to a fax machine (26) (column 2, lines 58-67, column 3, lines 1-4 and figure 1). The ecom (16) contains modems (62) and (84), which serve as input and output modems during transmission and reception (column 4, lines 27-29). This reads on a system for communicating a store-and-forward fax message via a computer network comprising a server that is configured to receive the fax message, wherein the server is in communication with the computer network, a plurality of modems, in

Art Unit: 2626

communication with the server, configured to send the fax message to a receiver and a communication link for delivery of the fax message to the receiver.

Murphy fails to teach of a module executing in the server for processing the fax, wherein processing the fax comprises of storing the fax in a memory, determining the availability of the each dial-up modem in the plurality dial-up modems, queuing the fax for later delivery if none of the dial-up modems is available and sending the fax message via one of the dial-up modems to a receiver.

Barak teaches of a fax logger (11), which contains a store and forward mechanism (column 11, lines 15-20 and figure 3). Upon receipt of a facsimile, the data is stored in storage (46) and added to the archive queue (44) (column 13, lines 21-40). The forward portion checks the queue for facsimiles and then determines if a modem is available or not and is then sent to a fax machine (column 14, lines 12-36). This reads on a module executing in the server for processing the fax, wherein processing the fax comprises of storing the fax in a memory, determining the availability of the each dial-up modem in the plurality dial-up modems, queuing the fax for later delivery if none of the dial-up modems is available and sending the fax message via one of the dial-up modems to a receiver.

Murphy could have been modified with the module of Barak. This modification would have been obvious to one of ordinary skill in the art at the time of the invention to store an incoming facsimile message and retrieve it if a modem is available.

Regarding claim 35, Murphy teaches that the electronic mail server (22) is connected over a POTS line (24) to another device (16) which is connected to a remote

fax machine (26) (column 2, lines 65-67, column 3, lines 1-3 and figure 2), which reads on sending the fax message to a receiver that is physically located in the local-toll area of the server.

Regarding claim 36, Murphy teaches that the ecom (16) is connected to the server (20) by a telephone line (column 3, lines 63-67), which reads on the communication link comprises a public switched telephone network, a conventional telephone link, a fiber optic link or a wireless link.

Regarding claim 37, Murphy teaches on an internet global area network (12) (figure 1), which reads on the computer network is the internet.

Regarding claim 38, Murphy teaches a system (10) for transmitting/receiving a fax over the internet global area networks (12) (column 2, lines 58-60). A local fax machine (14) is connected by line (15) to a signal manipulation device (16), which is in turn connected to a POTS line (18), which is terminated in a server (20), which is connected to the internet global area network (12). A remote server (22) is connected to the internet global area network (12) over a POTS line (24) to another device (16), which is connected to a fax machine (26) (column 2, lines 58-67, column 3, lines 1-4 and figure 1). This reads on a system for communicating a store-and-forward fax message via a computer network comprising a means for receiving the fax message, wherein the receiving means is in communication with the computer network.

Murphy fails to teach of a means for processing the fax, wherein processing the fax comprises of storing the fax in a memory, determining the availability of at least one dial-up modem in the plurality dial-up modems, queuing the fax for later delivery if at

Art Unit: 2626

least one of the dial-up modems is unavailable and sending the fax message via at least one of the dial-up modem and means for delivering the fax message to a receiver.

Barak teaches of a fax logger (11), which contains a store and forward mechanism (column 11, lines 15-20 and figure 3). Upon receipt of a facsimile, the data is stored in storage (46) and added to the archive queue (44) (column 13, lines 21-40). The forward portion checks the queue for facsimiles and then determines if a modem is available or not and is then sent to a fax machine (column 14, lines 12-36). This reads on a means for processing the fax, wherein processing the fax comprises of storing the fax in a memory, determining the availability of at least one dial-up modem in the plurality dial-up modems, queuing the fax for later delivery if at least one of the dial-up modems is unavailable and sending the fax message via at least one of the dial-up modem and means for delivering the fax message to a receiver.

Murphy could have been modified with the fax logger of Barak. This modification would have been obvious to one of ordinary skill in the art at the time of the invention to store an incoming facsimile message and retrieve it if a modem is available.

Regarding claim 39, Murphy teaches that the electronic mail server (22) is connected over a POTS line (24) to another device (16) which is connected to a remote fax machine (26) (column 2, lines 65-67, column 3, lines 1-3 and figure 2), which reads on sending the fax message to a receiver that is physically located in the local-toll area of the server.

Regarding claim 40, Murphy teaches that the ecom (16) is connected to the server (20) by a telephone line (column 3, lines 63-67), which reads on the



Art Unit: 2626

communication link comprises a public switched telephone network, a conventional telephone link, a fiber optic link or a wireless link.

Regarding claim 41, Murphy teaches on an internet global area network (12) (figure 1), which reads on the computer network is the internet.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claim 29 is rejected under 35 U.S.C. 102(b) as being anticipated by Murphy US 6028679.

Regarding claim 29, Murphy teaches a system (10) for transmitting/receiving a fax over the internet global area networks (12) (column 2, lines 58-60). A local fax machine (14) is connected by line (15) to a signal manipulation device (16), which is in turn connected to a POTS line (18), which is terminated in a server (20), which is connected to the internet global area network (12). A remote server (22) is connected to the internet global area network (12) over a POTS line (24) to another device (16), which is connected to a fax machine (26) (column 2, lines 58-67, column 3, lines 1-4 and figure 1). The ecom (16) contains modems (62) and (84), which serve as input and

Art Unit: 2626

output modems during transmission and reception (column 4, lines 27-29). This reads on a system for communicating a fax message via a computer network comprising a server that is configured to receive the fax message, wherein the server is in communication with the computer network, at least one dial-up modem, in communication with the server, configured to send the fax message to a receiver and a communication link for delivery of the fax message to the receiver.

### ***Conclusion***

Any inquiry concerning this communication should be directed to Michael Burleson whose telephone number is (703) 305-8683 and fax number is (703) 746-3006. The examiner can normally be reached Monday thru Friday from 8:00 a.m. – 4:30p.m. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kimberly Williams can be reached at (703) 305-4863



KIMBERLY WILLIAMS  
SUPERVISORY PATENT EXAMINER

Michael Burleson  
Patent Examiner  
Art Unit 2626



Mlb  
November 10, 2004